

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
PALOMA MORENO-ACOSTA
2 Paloma.Moreno-Acosta@lewisbrisbois.com
MICHELLE R. GILBOE, (*Pro Hac Vice* forthcoming)
3 Michelle.Gilboe@lewisbrisbois.com
KYLE D. NELSON, (*Pro Hac Vice* forthcoming)
4 Kyle.Nelson@lewisbrisbois.com
550 West C Street, Suite 1700
5 San Diego, CA 92101
Tel: 619.233.1006
6 Fax: 619.233.8627

7 *Attorneys for Defendant*
CYBEX INTERNATIONAL, INC.

8
9 UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

11 William Linn,

12 Plaintiff,

13 vs.

14 Cybex International, Inc. and Life
Fitness, Inc. ,

15 Defendant.
16

Case No.

NOTICE OF REMOVAL

Trial Date: None Set

17 Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Cybex
18 International, Inc. (hereinafter “Cybex”), by and through its counsel of record,
19 files this Notice of Removal, removing the above-captioned action from the
20 Superior Court of California, County of Sacramento (Case No.: 34-2021-
21 00308375) to the United States District Court for the Eastern District of
22 California. Removal is based upon federal diversity jurisdiction because the
23 parties are citizens of different states and the amount in controversy exceeds
24 \$75,000.00.

25 **I. INITIATION OF THIS ACTION**

26 1. On September 17, 2021, Plaintiff William Linn (hereinafter
27 “Plaintiff”) commenced a civil action in the Superior Court of California, County
28 of Sacramento (Case No.: 34-2021-00308375) by filing a Complaint (“the

1 Action”). (*See generally* Exhibit 1 attached hereto).

2 2. Cybex, through its registered service of process agent, was served
3 with this Complaint on May 10, 2022. (*See generally* Exhibit 2 attached hereto).

4 3. This Action is the subject of this Notice of Removal.

5 **II. GROUND FOR REMOVAL – DIVERSITY JURISDICTION**

6 4. 28 U.S.C. § 1441(a) provides that “any civil action brought in a State
7 court of which the district courts of the United States have original jurisdiction,
8 may be removed by the defendant...to the district court of the United States for
9 the district and division embracing the place where such action is pending.”

10 5. 28 U.S.C. § 1332(a) provides that federal district courts “shall have
11 original jurisdiction of all civil actions where the matter in controversy exceeds
12 the sum or value of \$75,000, exclusive of interest and costs, and is
13 between...citizens of different States.” This is referred to as “diversity
14 jurisdiction.” *Rojas v. Sea World Parks & Entm’t, Inc.*, 538 F. Supp. 3d 1008,
15 1013 (S.D. Cal. 2021).

16 **i. The Amount in Controversy is Satisfied Because Plaintiff**
17 **has Plead for Damages that Plausibly Puts Greater than**
18 **\$75,000 at Issue.**

19 6. In his Complaint, Plaintiff seeks damages that “exceeds 25,000”¹
20 stemming from a “personal injury” sustained while using a “Cybex International
21 Leg Press.” (Ex. 1 at pgs. 1-2).

22 7. Plaintiff alleges to have suffered “wage loss,” “hospital and medical
23 expenses,” “general damage,” and “loss of earning capacity.” (*Id.* at pg. 3).

24
25 _____
26 ¹ \$25,000.00 is the jurisdictional threshold for California’s Superior Courts, where
27 Plaintiff originally filed this Action. *See Ytuarte v. Superior Court*, 28 Cal. Rptr. 3d
28 474, 478 (2005) (“the municipal court had jurisdiction over cases where the amount in
controversy was \$ 25,000 or less and the superior court had jurisdiction over cases
above \$ 25,000”).

1 8. Upon information and belief, the damages and recovery that
2 Plaintiff seeks in the case exceeds \$75,000.²

3 9. Based on the foregoing, the amount in controversy requirement is
4 satisfied. *See* 28 U.S.C. § 1332(a). *See also Basicomputer Corp. v. Scott*, 973 F.2d
5 507, 510 (6th Cir. 1992) (“A court must not dismiss an action for failure to meet
6 the amount in controversy requirement unless it appears ‘to a legal certainty
7 that the claim is really for less than the jurisdictional amount.’”); *Fatte Alberts*
8 *v. Pizzaman’s Pavilion*, No. 1:20-cv-00238-DAD-SKO, 2020 U.S. Dist. LEXIS
9 122892, at *5 (E.D. Cal. July 13, 2020) (“the legal certainty test makes it very
10 difficult to secure a dismissal of a case on the ground that it does not appear to
11 satisfy the jurisdictional amount requirement. Only three situations clearly
12 meet the legal certainty standard: 1) when the terms of a contract limit the
13 plaintiff’s possible recovery; 2) when a specific rule of law or measure of damages
14 limits the amount of damages recoverable; and 3) when independent facts show
15 that the amount of damages was claimed merely to obtain federal court
16 jurisdiction.”).

17 **ii. Diversity of Citizenship is Satisfied Because this Action**
18 **Involves Citizens of Different States.**

19 10. Upon information and belief, Plaintiff is a resident of California.
20 (See generally Ex. 1). Upon information and belief, Plaintiff is a U.S. citizen
21 domiciled in the state of Michigan.

22 11. Cybex is a business corporation under the laws of the State of New
23 York and has its principle place of business in New York. For purposes of
24 diversity jurisdiction, “a corporation shall be deemed a citizen of any State by
25

26 ² Cybex served Plaintiff with a Request for Statement of Damages pursuant to
27 California Code of Civil Procedure 425.11. (See Exhibit 3 attached hereto). Despite
28 Plaintiff’s deadline for responding to this request passing, Plaintiff has not provided
any response.

1 which it has been incorporated and of the State where it has its principal place
2 of business.” 28 U.S.C. § 1332(c). Therefore, Cybex is a citizen of the state of
3 New York.

4 12. Defendant Life Fitness, Inc. (hereinafter “Life Fitness”) is a
5 business corporation under the laws of the State of Delaware and has its
6 principle place of business in Illinois. For purposes of diversity jurisdiction, “a
7 corporation shall be deemed a citizen of any State by which it has been
8 incorporated and of the State where it has its principal place of business.” 28
9 U.S.C. § 1332(c). Therefore, Life Fitness is a citizen of the state of Delaware and
10 Illinois.

11 13. Plaintiff’s Complaint also purports to name “Doe Defendants” as a
12 defendant in the Action. (*See* Ex. 1 at ¶ 6). 28 U.S.C. § 1441(b)(1) specifically
13 states that “[i]n determining whether a civil action is removable on the basis of
14 [diversity jurisdiction], the citizenship of defendants sued under fictitious
15 names shall be disregarded.”

16 14. Based on the foregoing, complete diversity of citizenship exists
17 between the Plaintiff and Defendants in this case: Plaintiff is a citizen of
18 California, while Defendants are citizens of New York, Delaware, and Illinois.

19 **TIMELINESS OF REMOVAL**

20 15. Pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is timely
21 filed by Cybex within thirty (30) days after service of Plaintiff’s Complaint,
22 which was May 10, 2022. (*See* Ex. 2).

23 16. Contemporaneous with the filing of this Notice of Removal, Cybex
24 will promptly file a written notice thereof to Plaintiff and will file a copy of this
25 Notice of Removal with the Clerk of the Superior Court of California, County of
26 Sacramento.

27 **III. VENUE**

28 17. Venue is proper in this District, pursuant to 28 U.S.C. § 1441(a),

1 because it embraces the Superior Court of California, County of Sacramento
2 where the Action has been pending.

3 **IV. CONSENT**

4 18. Section 1446(b)(2)(A) provides: “When a civil action is removed
5 solely under section 1441(a), all defendants who have been properly joined and
6 served must join in or consent to the removal of the action.” 28 U.S.C. §
7 1446(b)(2)(A).

8 19. Cybex is the only defendant named in the Action that has been
9 served. Cybex is represented by the undersigned counsel and consents to
10 removal of this Action.

11 **WHEREFORE**, for all of the foregoing reasons, this case is removable
12 pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 because the Action invokes
13 federal diversity subject matter jurisdiction.

14
15 Date: June 8, 2022

16 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

17 /S/ PALOMA MORENO-ACOSTA

18 PALOMA MORENO-ACOSTA

Paloma.Moreno-Acosta@lewisbrisbois.com

19 MICHELLE R. GILBOE, (*Pro Hac Vice*
20 forthcoming)

Michelle.Gilboe@lewisbrisbois.com

21 KYLE D. NELSON, (*Pro Hac Vice* forthcoming)

Kyle.Nelson@lewisbrisbois.com

22 550 West C Street, Suite 1700

23 San Diego, CA 92101

24 Tel: 619.233.1006

Fax: 619.233.8627

25 *Attorneys for Cybex International, Inc.*
26
27
28

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Michael Trezza, SBN: 142922
 Law Office of Michael Trezza
 506 Second Street
 Yuba City, CA 95991

TELEPHONE NO: (530)673-5637

FAX NO. (Optional): (530)673-0277

E-MAIL ADDRESS (Optional): michaeltrezzalaw@att.net

ATTORNEY FOR (Name): Plaintiff

Superior Court of California,
 FOR COURT USE ONLY
 Sacramento

09/17/2021

apenn

By _____, Deputy

Case Number:

34-2021-00308375

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

STREET ADDRESS: 720 Ninth Street

MAILING ADDRESS: 720 Ninth Street

CITY AND ZIP CODE: Sacramento, 95814

BRANCH NAME:

PLAINTIFF: WILLIAM LINN

DEFENDANT: CYBEX INTERNATIONAL, LIFE FITNESS, INC.

☒ DOES 1 TO 10

COMPLAINT—Personal Injury, Property Damage, Wrongful Death

☐ AMENDED (Number):

Type (check all that apply):

☐ MOTOR VEHICLE ☒ OTHER (specify): Product Liability☐ Property Damage ☐ Wrongful Death☒ Personal Injury ☐ Other Damages (specify):

Jurisdiction (check all that apply):

☐ ACTION IS A LIMITED CIVIL CASEAmount demanded ☐ does not exceed \$10,000☐ exceeds \$10,000, but does not exceed \$25,000☒ ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)☐ ACTION IS RECLASSIFIED by this amended complaint☐ from limited to unlimited☐ from unlimited to limited

CASE NUMBER:

1. Plaintiff (name or names): William Linn

alleges causes of action against defendant (name or names):

Cybex International, Life Fitness, Inc

2. This pleading, including attachments and exhibits, consists of the following number of pages: 4

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):b. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

Page 1 of 3



SHORT TITLE:

CASE NUMBER:

4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

- a. ☒ except defendant (name): Cybex International

(1) ☐ a business organization, form unknown

(2) ☒ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- c. ☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- b. ☒ except defendant (name): Life Fitness, Inc.

(1) ☒ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- d. ☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

- a. ☒ Doe defendants (specify Doe numbers): 1-5 were the agents or employees of other named defendants and acted within the scope of that agency or employment.

- b. ☒ Doe defendants (specify Doe numbers): 6-10 are persons whose capacities are unknown to plaintiff.

7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.

b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.

c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.

d. ☐ other (specify):

9. ☐ Plaintiff is required to comply with a claims statute, and

a. ☐ has complied with applicable claims statutes, or

b. ☐ is excused from complying because (specify):

SHORT TITLE:

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (specify):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: September 14, 2021

MICHAEL TREZZA

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

CASE NUMBER:

William Linn vs. Cybex International, Life Fitness, Inc.

First

CAUSE OF ACTION—Products Liability

Page 4

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint
(Use a separate cause of action form for each cause of action.)

Plaintiff (name): William Linn

Prod. L-1. On or about (date): November 14, 2019

plaintiff was injured by the following product:

Cybex International Leg Press

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects.
The product was defective when it left the control of each defendant. The product at the time of injury was being☒ used in the manner intended by the defendants.☐ used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a

☐ purchaser of the product.☒ user of the product.☐ bystander to the use of the product.☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. ☒ **Count One—Strict liability** of the following defendants whoa. ☒ manufactured or assembled the product (names):

Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10b. ☒ designed and manufactured component parts supplied to the manufacturer (names):

Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10c. ☒ sold the product to the public (names):

Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10Prod. L-5. ☒ **Count Two—Negligence** of the following defendants who owed a duty to plaintiff (names):

Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10Prod. L-6. ☒ **Count Three—Breach of warranty** by the following defendants (names):

Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10a. ☒ who breached an implied warrantyb. ☐ who breached an express warranty which was☐ written ☐ oralProd. L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are☐ listed in Attachment-Prod. L-7 ☐ as follows:

EXHIBIT 2



05/11/2022

Cybex International, Inc.
REBECCA BOLGER MANAGER LEGAL & RISK MANAGEMENT SERVICES
LIFE FITNESS, LLC
10601 Belmont Avenue
Franklin Park IL 60131

SERVICE OF PROCESS NOTICE

Item: 2022-17

The following is a courtesy summary of the enclosed document(s). **ALL information should be verified by you.**

Note: Any questions regarding the substance of the matter described below, including the status or how to respond, should be directed to the contact set forth in line 12 below or to the court or government agency where the matter is being heard.

1.	Entity Served: Entity Served If Different:	Cybex International, Inc. Cybex International
2.	Title of Action:	William Linn vs. Cybex International, et al.
3.	Document(s) Served:	Summons Complaint - Personal Injury, Property Damage, Wrongful Death Order
4.	Court/Agency:	Sacramento County Superior Court
5.	State Served:	California
6.	Case Number:	34-2021-00308375
7.	Case Type:	Strict Liability/Breach of Implied Warranty
8.	Method of Service:	Hand Delivered
9.	Date Received:	Tuesday 05/10/2022
10.	Date to Client:	Wednesday 05/11/2022
11.	# Days When Answer Due: Answer Due Date:	3 Friday 05/13/2022 CAUTION: Client is solely responsible for verifying the accuracy of the estimated Answer Due Date. To avoid missing a crucial deadline, we recommend immediately confirming in writing with opposing counsel that the date of the service in their records matches the Date Received.
12.	Sop Sender: (Name, City, State, and Phone Number)	Michael Trezza Yuba City, CA 530-673-5637
13.	Shipped To Client By:	Email Only with PDF Link
14.	Tracking Number:	
15.	Handled By:	051
16.	Notes:	Please note there are other Due Dates listed in the document

NOTE: This notice and the information above is provided for general informational purposes only and should not be considered a legal opinion. The client and their legal counsel are solely responsible for reviewing the service of process and verifying the accuracy of all information. At ComputerShare, we take pride in developing systems that effectively manage risk so our clients feel comfortable with the reliability of our service. We always deliver service of process so our clients avoid the risk of a default judgment. As registered agent, our role is to receive and forward service of process. To decrease risk for our clients, it is not our role to determine the merits of whether service of process is valid and effective. It is the role of legal counsel to assess whether service of process is invalid or defective. Registered agent services are provided by United Agent Group Inc.

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CYBEX INTERNATIONAL, LIFE FITNESS, INC. and DOES 1-10

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

WILLIAM LINN

FILED
Superior Court of California,
Sacramento
COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
09/23/2021
apsnn
By _____, Deputy
Case Number:
34-2021-00308375

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

(AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.)

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): SACRAMENTO COUNTY SUPERIOR COURT,
720 NINTH STREET, SACRAMENTO, CA 95814

CASE NUMBER: (Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

LAW OFFICE OF MICHAEL TREZZA, 506 SECOND STREET, YUBA CITY, CA 95991 (530)673-5637

DATE:

(Fecha)

SEP 23 2021

Clerk, by

(Secretario)

A. PENN

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): CYBEX INTERNATIONAL

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

☒ by personal delivery on (date):

SUMMONS

FILED

SEP 23 2021
CLERK OF COURT
SACRAMENTO COUNTY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Michael Trezza, SBN: 142922 Law Office of Michael Trezza 506 Second Street Yuba City, CA 95991 TELEPHONE NO: (530)673-5637 FAX NO. (Optional): (530)673-0277 E-MAIL ADDRESS (Optional): michaeltrezzalaw@att.net ATTORNEY FOR (Name): Plaintiff	<div style="text-align: right;"> PLD-PI-001 Superior Court of California, <small>FOR COURT USE ONLY</small> SACRAMENTO 09/17/2021 apenn By _____, Deputy Case Number: 34-2021-00308375 </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: 720 Ninth Street CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME:	
PLAINTIFF: WILLIAM LINN DEFENDANT: CYBEX INTERNATIONAL, LIFE FITNESS, INC., <input checked="" type="checkbox"/> DOES 1 TO 10	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Product Liability <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):	CASE NUMBER:
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	

1. Plaintiff (name or names): William Linn
alleges causes of action against defendant (name or names):
Cybex International, Life Fitness, Inc
2. This pleading, including attachments and exhibits, consists of the following number of pages: 4
3. Each plaintiff named above is a competent adult
- a. ☐ except plaintiff (name):
- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
- (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
- (b) ☐ other (specify):
- (5) ☐ other (specify):
- b. ☐ except plaintiff (name):
- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
- (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
- (b) ☐ other (specify):
- (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

PLD-PI-001

SHORT TITLE:

CASE NUMBER:

4. ☐ Plaintiff *(name)*:
is doing business under the fictitious name *(specify)*:

and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. ☒ except defendant *(name)*: Cybex International
(1) ☐ a business organization, form unknown
(2) ☒ a corporation
(3) ☐ an unincorporated entity *(describe)*:

(4) ☐ a public entity *(describe)*:

(5) ☐ other *(specify)*:
- c. ☐ except defendant *(name)*:
(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe)*:

(4) ☐ a public entity *(describe)*:

(5) ☐ other *(specify)*:
- b. ☒ except defendant *(name)*: Life Fitness, Inc.
(1) ☒ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe)*:

(4) ☐ a public entity *(describe)*:

(5) ☐ other *(specify)*:
- d. ☐ except defendant *(name)*:
(1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity *(describe)*:

(4) ☐ a public entity *(describe)*:

(5) ☐ other *(specify)*:
- ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. ☒ Doe defendants *(specify Doe numbers)*: 1-5 _____ were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. ☒ Doe defendants *(specify Doe numbers)*: 6-10 _____ are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are *(names)*:
8. This court is the proper court because
- a. ☐ at least one defendant now resides in its jurisdictional area.
- b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
- d. ☐ other *(specify)*:
9. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because *(specify)*:

PLD-PI-001

SHORT TITLE:

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☒ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (*specify*):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (*specify*):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
- a. ☐ listed in Attachment 12.
 - b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: September 14, 2021

MICHAEL TREZZA

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: William Linn vs. Cybex International, Life Fitness, Inc.	CASE NUMBER:
--------------------------------------------------------------------------	--------------

First CAUSE OF ACTION—Products Liability Page 4
(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint
(Use a separate cause of action form for each cause of action.)

Plaintiff (name): William Linn

Prod. L-1. On or about (date): November 14, 2019 plaintiff was injured by the following product:
Cybex International Leg Press

Prod. L-2. Each of the defendants knew the product would be purchased and used without inspection for defects.
The product was defective when it left the control of each defendant. The product at the time of injury was being

- ☒ used in the manner intended by the defendants.
☐ used in the manner that was reasonably foreseeable by defendants as involving a substantial danger not readily apparent. Adequate warnings of the danger were not given.

Prod. L-3. Plaintiff was a

- ☐ purchaser of the product. ☒ user of the product.
☐ bystander to the use of the product. ☐ other (specify):

PLAINTIFF'S INJURY WAS THE LEGAL (PROXIMATE) RESULT OF THE FOLLOWING:

Prod. L-4. ☒ Count One—Strict liability of the following defendants who

- a. ☒ manufactured or assembled the product (names):
Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10

- b. ☒ designed and manufactured component parts supplied to the manufacturer (names):
Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10

- c. ☒ sold the product to the public (names):
Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10

Prod. L-5. ☒ Count Two—Negligence of the following defendants who owed a duty to plaintiff (names):
Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10

Prod. L-6. ☒ Count Three—Breach of warranty by the following defendants (names):
Cybex International, Life Fitness, Inc. and

☒ Does 1 to 10

- a. ☒ who breached an implied warranty
b. ☐ who breached an express warranty which was
☐ written ☐ oral

Prod. L-7. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are
☐ listed in Attachment-Prod. L-7 ☐ as follows:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

ORDER

DATE: 3/21/2022

DEPT: 38

JUDICIAL OFFICER PRESIDING: Kenneth C. Mennemeier

CASE NO: 34-2021-00308375-CU-PO-GDS

CASE TITLE: Linn vs. Cybex International

CASE CATEGORY: Civil – Unlimited

NATURE OF PROCEEDINGS: CASE MANAGEMENT CONFERENCE

Pursuant to the Presiding Judge's July 7, 2021 Order re: Reopening of Case Management Program Departments, the court hereby sets a **Case Management Conference ("CMC") for Friday, 5/13/2022 at 8:30 a.m. in Department 38.**

All parties must file and serve a Case Management Statement at least 15 calendar days before the CMC. If answers, defaults, and/or dismissals for all defendants and/or cross-defendants are not on file at the time of the CMC, the Court (1) will not refer the case for selection of mandatory settlement conference and trial dates, and (2) may issue an Order to Show Cause Re: Compliance. You may check the status of your case on the Court's website at <https://services.saccourt.ca.gov/PublicCaseAccess/>.

Pursuant to Local Rule 2.47, the Court will issue and publish a tentative ruling for the CMC no later than 2:00 p.m. on the court day before the scheduled CMC. Tentative rulings can be accessed on the Court's website at <https://services.saccourt.ca.gov/PublicCaseAccess/>. Any party who wishes to contest the tentative ruling must (1) request a hearing by calling the clerk in Department 38 at (916) 874-5226 no later than 4:00 p.m. on the court day before the scheduled CMC, and (2) advise opposing counsel of the request. If a hearing is not requested by 4:00 p.m. on the court day before the scheduled CMC, the tentative ruling will become the final order of the Court.

If a hearing is requested, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the Court and all other parties in accordance with Code of Civil Procedure 367.75. Although remote participation is not required, the Court will presume all parties are appearing remotely for non-evidentiary civil hearings. The Department 38 Zoom link is <https://saccourt-ca-gov.zoomgov.com/join/928585828> and the Zoom Meeting ID is: 161 0836 2593. To appear telephonically, call (833) 568-8864 and enter the Zoom ID referenced above.

Plaintiff shall serve a copy of this order on any party to the complaint. Any cross-complainant shall have the same obligation with respect to any party to their cross-complaint.

ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO Gordon D Schaber Courthouse 720 Ninth STREET Sacramento, CA 95814-1311	
SHORT TITLE: Linn vs. Cybex International	
CLERK'S CERTIFICATE OF SERVICE BY MAIL	CASE NUMBER: 34-2021-00308375-CU-PO-GDS

I certify that I am not a party to this cause. I certify that a true copy of Order re: Scheduling of Case Management Conference was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Sacramento, California, on 03/23/2022.

Clerk of the Court, by: /s/ A. Penn, Deputy

MICHAEL J TREZZA
LAW OFFICES OF MICHAEL TREZZA
506 SECOND STREET
YUBA CITY, CA 95991 US

CLERK'S CERTIFICATE OF SERVICE BY MAIL

MAY 10 2022

EXHIBIT 3

FILED
Superior Court Of California,
Sacramento
05/18/2022
mvalledor
By _____, Deputy
Case Number:
34-2021-00308375

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
2 PALOMA I. MORENO-ACOSTA, SB# 310766
3 E-Mail: Paloma.Moreno-Acosta@lewisbrisbois.com
4 550 West C Street, Suite 1700
San Diego, California 92101
Telephone: 619.233.1006
Facsimile: 619.233.8627

5 Attorneys for Defendants, CYBEX
6 INTERNATIONAL, INC. and LIFE FITNESS,
INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

11 WILLIAM LINN,

12 Plaintiff,

13 vs.

14 CYBEX INTERNATIONAL, INC. AND
15 LIFE FITNESS, INC.,

16 Defendants.

Case No. 34-2021-00308375

**REQUEST FOR STATEMENT OF
DAMAGES**

Dept.: 38

Judge: Hon. Richard K. Sueyosh

Action Filed:

September 17, 2021

Trial Date:

None Set

17 **TO PLAINTIFF AND TO PLAINTIFF'S ATTORNEYS OF RECORD:**

18 REQUEST IS HEREBY MADE that Plaintiff, WILLIAM LINN, supply Defendants,
19 CYBEX INTERNATIONAL, INC. and LIFE FITNESS, INC., within fifteen (15) days of the
20 service of this Request, a complete statement setting forth the nature and amount of damages being
21 sought in the above-entitled action.

22 This Request is made in compliance with *Code of Civil Procedure* Section 425.11.

23 DATED: May 18, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

24
25 By:

26 PALOMA I. MORENO-ACOSTA
27 Attorneys for Defendants CYBEX
28 INTERNATIONAL, INC. and LIFE FITNESS,
INC.

CALIFORNIA STATE COURT PROOF OF SERVICE

William Linn v Cybex International, Inc., et al.

Case No. 34-2021-00308375

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. My business address is 550 West C Street, Suite 1700, San Diego, CA 92101.

On May 18, 2022, I served true copies of the following document(s):

REQUEST FOR STATEMENT OF DAMAGES

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael Trezza, Esq.
Law Office of Michael Trezza
506 Second Street
Yuba City, CA 95991
Tel: (530) 673-5637
Fax: (520) 673-0277
michaeltrezzalaw@att.net
Attorneys for Plaintiff

The documents were served by the following means:

☒ (BY ELECTRONIC TRANSMISSION ONLY) Only by e-mailing the document(s) to the persons at the e-mail address(es) listed above based on notice provided on March 16, 2020 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 18, 2022, at San Diego, California.



Janet Smith

CALIFORNIA STATE COURT PROOF OF SERVICE

William Linn v Cybex International, et al.

Case No. 34-2021-00308375

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. My business address is 550 West C Street, Suite 1700, San Diego, CA 92101.

On June 8, 2022, I served true copies of the following document(s):

NOTICE OF REMOVAL

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael Trezza, Esq.
Law Office of Michael Trezza
506 Second Street
Yuba City, CA 95991
Tel: (530) 673-5637
Fax: (520) 673-0277
michaeltrezzalaw@att.net
Attorneys for Plaintiff

The documents were served by the following means:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from e-mail address cinthia.bell@lewisbrisbois.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 8, 2022, at San Diego, California.

Cynthia Bell

CINTHIA BELL